IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

WP(C).No. 9320 of 2007(H)

OS.203/2006 of MUNSIFF COURT, KARUNAGAPPALLY

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PETITIONER:

M.SHERIFF,
KATTUMPARATH GARDENS, KADATHOOR MURI,
KULASEKHARAPURAM VILLAGE, KARUNAGAPPALLY.

BY ADV. SRI.J.OM PRAKASH

RESPONDENTS:

C.BASHEER,
CHARUVIL PURAYIDATHIL, AARAMAMCHERIYIL,
KOLLAM.

BY ADV. SRI.M.S.UNNIKRISHNAN
SMT.S.KARTHIKA
SRI.M.R.ANISON
SRI.T.R.RAJESH
SMT.K.P.GEETHA MANI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1: A TRUE COPY OF THE PLAINT IN O.S.NO:203/2006 DT.30/5/2006 OF THE MUNSIFF'S COURT, KARUNAGAPPALLY

EXT.P2: -DO- OF THE WRITTEN STATEMENT OF THE DEFENDANT IN O.S.NO: 203/06 DT.29.7.2006 OF THE MUNSIFF'S COURT, KARUNAGAPPALLY

EXT.P3: -DO- OF THE ORDER OF THE MUNSIFF'S COURT IN O.S.NO:203/06 DT. 3.2.2006

jj /TRUE COPY/

P.A.TO JUDGE

M.N.KRISHNAN, J.

WP(C)No. 9320 OF 2007 H

Dated this the 21st June, 2007.

JUDGMENT

This writ petition is filed seeking to quash the order of the Munsiff, Karunagappally in O.S.203/2006. As per the impugned order the learned Munsiff has directed that market value of the property has to be arrived at and half the market value has to be taken into account and pay court fee under Section 27(a)(i) of the Kerala Court Fees and Suits Valuation Act, 1959. Under Section 27(a)(i) of the Act where the plaintiff alleges that his title to the property is denied or where an issue is framed regarding the plaintiff's title to the property, fee shall be computed on one-half of the market value of the property on or rupees five hundred whichever is higher. The learned Munsiff has found that as per the written statement the title of the plaintiff over the plaint schedule property is denied by the defendant. When, in a suit of this nature the title is denied by the defendant, an opportunity has to be afforded to the plaintiff to pay court fee under Section 27(a)(i) or (ii), as the case may be and when the plaintiff does not take any steps to carry out the said process the said issue has to be deleted and the issue has to be recast to the effect whether the plaintiff is entitled to the injunction

as prayed for. Going through the averments in the plaint and the written statement a doubt may arise whether a relief as sought for by the plaintiff can be given under Section 27(a)(i) of the Court Fees Act. If it is so the court can frame an issue regarding the maintainability of the suit and decide it as a preliminary issue. But the court cannot compel the plaintiff to amend the plaint or pay court fee under a particular provision of law when he does not want an adjudication on the question of title. Therefore, the order under challenge is set aside and the learned Munsiff is directed to frame an issue on the question of title and then give an opportunity to the plaintiff to take steps and in case of failure, recast the issue and then may decide the question whether a relief of injunction can be granted in a suit of this nature which touches the maintainability of the suit. Writ petition is disposed of accordingly.

2. I make it clear that the whole matter has to be proceeded with by the learned Munsiff untrammelled by the observations contained in any part of this judgment.

M.N.KRISHNAN
Judge

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